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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 EBAY INC.,

12 Plaintiff,

13 v.

14 DIGITAL POINT SOLUTIONS, INC.,
15 SHAWN HOGAN, KESSLER'S
16 FLYING CIRCUS, THUNDERWOOD
17 HOLDINGS, INC., TODD DUNNING,
DUNNING ENTERPRISE, INC.,
BRIAN DUNNING,
18 BRIANDUNNING.COM, and DOES 1-
20,

19 Defendants.

Case No. C 08-4052 JF PVT

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED]
ORDER**

Conference Date: August 6, 2010
Time: 10:30 a.m.
Judge: Hon. Jeremy Fogel

This Case Management Statement and Proposed Order is jointly submitted by plaintiff eBay Inc. and defendants Digital Point Solutions, Inc., Shawn Hogan, Thunderwood Holdings, Inc., Brian Dunning, Briandunning.com, and Kessler's Flying Circus, and those parties request that the Court adopt it as its Case Management Order in this case. Those parties, through undersigned counsel, have met and conferred on the matters contained herein. eBay was unsuccessful in its attempts to contact the remaining defendants, who are proceeding Pro Se, prior to filing this Case Management Statement and Proposed Order.

I. JURISDICTION AND SERVICE

There have been no changes since the previous Joint Case Management Statement.

II. FACTS

There have been no changes since the previous Joint Case Management Statement.

III. LEGAL ISSUES

There have been no changes since the previous Joint Case Management Statement.

IV. PENDING AND ANTICIPATED MOTIONS

On June 24, 2010, Defendants Shawn Hogan and Brian Dunning were indicted. *United States v. Hogan*, CR 10-0495 JF (N.D. Cal. June 24, 2010); *United States v. Dunning*, CR 10-0494 JF (N.D. Cal. June 24, 2010). The indictments were based on the same alleged cookie stuffing scheme at issue in this civil action. On June 29, 2010, the United States filed a Notice of Related Case stating that defendants Shawn Hogan and Brian Dunning in the instant action were alleged to have engaged in the same cookie stuffing scheme that is the subject of the indictments. On July 7, 2010, the Court issued an order finding that the instant civil action and the aforementioned criminal cases are related.

On July 20, 2010, Defendants Thunderwood Holdings, Inc., Brian Dunning, BrianDunning.com, and Kessler's Flying Circus filed a motion to stay this civil action as against those Defendants pending resolution of the indictment and attendant criminal proceeding against defendant Brian Dunning. Footnote 2 of that motion indicated that the other defendants were not in agreement regarding the propriety of a stay. On July 21,

2010, this Court set a case management conference for August 6, 2010 at 10:30 a.m.

On July 27, 2010, all parties jointly stipulated and moved that this civil action be stayed in its entirety as to all parties until further ordered by the Court. The parties further stipulated and moved that the Court vacate the existing case management dates, including, but not limited to, the fact and expert discovery cut-off dates, the pretrial conference date, and the jury trial date. The parties also stipulated and moved that a further case management conference be set for February 11, 2011, approximately six months from the date of the stipulation, or as otherwise convenient for the Court. That joint stipulation and motion remain pending as of the filing of this Case Management Conference Statement. Defendants Thunderwood Holdings, Inc., Brian Dunning, BrianDunning.com, and Kessler's Flying Circus will withdraw their pending motion to stay once the Court signs the joint stipulation and order staying the case.

V. AMENDMENT OF PLEADINGS

There have been no changes since the previous Joint Case Management Statement.

VI. EVIDENCE PRESERVATION

There have been no changes since the previous Joint Case Management Statement.

VII. DISCLOSURES

There have been no changes since the previous Joint Case Management Statement.

VIII. DISCOVERY PLAN

As discussed in section IV above, in light of the indictments of defendants Shawn Hogan and Brian Dunning, all parties jointly stipulated and moved that this civil action be stayed in its entirety as to all parties until further ordered by the Court. Should the Court grant the requested stay, all currently pending discovery obligations and disputes will be held in abeyance until the lifting of the stay by this Court and the parties will revisit the discovery schedule at that time.

IX. RELATED CASES

There have been no changes since the previous Joint Case Management Statement.

1 **X. RELIEF**

2 There have been no changes since the previous Joint Case Management Statement.

3 **XI. SETTLEMENT AND ADR**

4 There have been no changes since the previous Joint Case Management Statement.

5 **XII. MAGISTRATE JUDGE**

6 There have been no changes since the previous Joint Case Management Statement.

7 **XIII. OTHER REFERENCES**

8 There have been no changes since the previous Joint Case Management Statement.

9 **XIV. NARROWING OF ISSUES**

10 There have been no changes since the previous Joint Case Management Statement.

11 **XV. EXPEDITED SCHEDULE**

12 There have been no changes since the previous Joint Case Management Statement.

13 **XVI. SCHEDULING**

14 As discussed in section IV above, the parties have stipulated and moved that a
15 further case management conference be set for February 11, 2011, approximately six
16 months from the date of the stipulation, or as otherwise convenient for the Court.

17 **XVII. TRIAL**

18 There have been no changes since the previous Joint Case Management Statement.

19 **XVIII. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR**
20 **PERSONS**

21 There have been no changes since the previous Joint Case Management Statement.

22 Dated: July 30, 2010

DAVID R. EBERHART
SHARON M. BUNZEL
NORA M. PUCKETT
O'MELVENY & MYERS LLP

23 By: /s/ David R. Eberhart
24 David R. Eberhart

25 *Attorneys for Plaintiff*
26 eBay Inc.

1 Dated: July 30, 2010

SEYAMACK KOURETSCHIAN
COAST LAW GROUP, LLP

4 By: /s/ Ross Campbell
Ross Campbell

6 *Attorneys for Defendants*
Digital Point Solutions, Inc. and Shawn
7 Hogan

8 Dated: July 30, 2010

LEO J. PRESIADO
RUS, MILIBAND & SMITH, A
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11 By: /s/ Leo J. Presiado
Leo J. Presiado

13 *Attorneys for Defendants*
Thunderwood Holdings, Inc., Brian
14 Dunning and BrianDunning.com

15 Dated: July 30, 2010

PATRICK K. MCCLELLAN
LAW OFFICE OF PATRICK K.
MCCLELLAN

18 By: /s/ Patrick K. McClellan
Patrick K. McClellan

20 *Attorney for Defendant*
Kessler's Flying Circus

21 **ATTESTATION**

23 Pursuant to General Order No. 45 X(B), I hereby attest that concurrence in the
24 filing of this document has been obtained from each of the above-listed signatories.

27 By: /s/ David R. Eberhart
David R. Eberhart

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order are hereby adopted by this Court as the Case Management Order for the case, and the parties are ordered to comply with this Order. This action is stayed in its entirety as to all parties until further order by the Court. The Court hereby vacates all existing case management dates. A further case management conference will be held on February 11, 2011 at _____.

IT IS SO ORDERED.

Dated: _____

The Honorable Jeremy Fogel
United States District Court Judge
Northern District of California

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